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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY

IN THE MATTER OF THE SURRENDER	:	Administrative Action
OF THE LICENSE OF	:	
	:	ORDER REINSTATING LICENSE
KENNETH AVERY, D.M.D.	:	WITH RESTRICTIONS
License # 22DI 01653200	:	
	:	
TO PRACTICE DENTISTRY	:	
IN THE STATE OF NEW JERSEY	:	
	:	

This matter was opened to the New Jersey State Board of Dentistry upon the request of Kenneth Avery, D.M.D. (respondent), to reinstate his license to practice dentistry. Respondent voluntarily surrendered his license by order entered on January 19, 2011, following receipt of information that he may be impaired due to abuse of alcohol.

In support of his request to reinstate, respondent appeared before the Board on July 20, 2011, without counsel but was accompanied by Dr. Louis E. Baxter, M.D., the Executive Medical Director of Professional Assistance Program (PAP) of New Jersey. Respondent submitted reports dated April 29, May 31, July 1 and

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July 20, 2011, from the PAP supporting his request but advocating restrictions on his license. At his appearance, respondent testified that he is currently being monitored by the PAP. He also testified about the history of his practice, his conduct during the intervening period of time from his participation with the PAP to his appearance before the Board, the financial impact on his practice and family life due to the surrender of his license and his proposed plan to return to practice.

Dr. Baxter testified that respondent was monitored from June 2010 to August 2010. In August 2010, respondent advised PAP that he entered into Court-ordered residential treatment at New Hope Foundation but re-enrolled with PAP in January 2011. According to Dr. Baxter, all of respondent's urine screens were reported as negative for any psychoactive substances, including alcohol. Additionally, Dr. Baxter testified that respondent has nine (9) months of ongoing documented recovery and has complied with the treatment plan that was established for him, including random, twice weekly urine monitoring; attendance at a minimum of three meetings of NA/AA per week; and routine follow up with a PAP representative. However, Dr. Baxter testified that respondent "is unable to afford professional counseling" and thus "is involved in a church-based therapy group." Dr. Baxter is of the opinion that the financial stress due to his continued unemployment "is

detrimental to his ongoing recovery" and recommended reinstatement of his licensure with restrictions.

Based upon the record and his testimony, the Board has determined that respondent's return to practice with restrictions is appropriate at this time. The terms imposed by this order are designed to ensure that as he reenters practice in this State, respondent's practice is consistent with the public health, safety and welfare.

IT IS, THEREFORE, ON THIS 12th DAY OF September, 2011

HEREBY ORDERED AND AGREED THAT:

1. The license of Kenneth Avery, D.M.D., to practice dentistry in this State is hereby reinstated, subject to the terms in this order. Respondent shall comply with all administrative issues related to reinstatement, including undergoing criminal history background check, payment of applicable fees for his license and his CDS registration.

2. Respondent shall remain enrolled in and participate with the PAP and shall comply with the recommendations for treatment, including but not limited to:

(a) monthly face-to-face contact with representatives from that program for the first six months following entry of this order, and thereafter at the discretion of the Executive Medical Director of the PAP;

(b) attendance at support groups, NA or AA, at a minimum of three times per week;

(c) random urine monitoring a minimum of twice weekly for the first month of licensure, followed by a minimum of weekly screens for the subsequent two months. Thereafter, respondent shall be screened on a random basis a minimum of twice monthly, unless more frequent screens are directed by the Executive Medical Director of the PAP; and

(d) counseling as recommended by the Executive Medical Director of the PAP.

3. If respondent discontinues participation with the PAP or fails to comply with the conditions imposed by the program or outlined in this consent order without obtaining approval of the Board and the PAP, he shall be deemed in violation of this Order. After the period specified in this order, reduction in urine monitoring or the number of required face-to-face meetings with the PAP shall be at the discretion of the Executive Medical Director of the Program with notification to the Executive Director of the State Board of Dentistry.

4. Respondent shall abstain from the use of alcohol and from all psychoactive substances, unless prescribed by a treating physician for a documented medical condition with prior notification to the Executive Medical Director of the PAP of the diagnosis and prescribed medications. In addition, respondent

shall advise any and all treating physicians and/or dentists of his history of substance abuse.

5. The PAP shall submit quarterly reports, including urine results, to the Board regarding respondent's participation and compliance with all requirements of the PAP and this order. If respondent has a positive urine, misses an appointment without consent, or has a lapse or slip in his recovery, or if respondent terminates recommended counseling or his participation with the PAP, the PAP shall immediately inform the Board. For purposes of this paragraph, "immediately" shall mean reporting the information orally within 24 hours and following up with a written report within 48 hours.

6. (a) Any failure by respondent to submit or provide a urine sample within twenty-four (24) hours of a request will be deemed to be equivalent to a confirmed positive urine test. In the event respondent is unable to appear for a scheduled urine test or provide a urine sample due to illness or other impossibility, consent to waive that day's test must be secured from the PAP. Respondent shall notify the PAP if he will be out of the State for any reason, so that the program may make a determination regarding alternate testing.

(b) Any urine test result showing creatinine levels below 20 mg/dL and a specific gravity below 1.003 shall create a rebuttable presumption of a confirmed positive urine test. Any

such result shall be followed immediately by a confirming GC/MS test.

(c) Respondent shall familiarize himself with all foods, food additives or other products (such as poppy seeds) which may affect the validity of urine screens, be presumed to possess that knowledge, and shall refrain from the use of such substances. Ingestion of such substances shall not be an acceptable reason for a positive urine screen and/or failure to comply with the urine monitoring program.

(d) The PAP may, after notifying the Board, modify the frequency of testing or method of testing during the monitoring period.

7. Respondent shall provide any and all releases to any and all parties who are participating in a monitoring, treatment, or other program as outlined in this order, as may be required in order that all reports, records, and other pertinent information may be provided to the Board in a timely manner. Respondent agrees that any information received by the Board regarding respondent's treatment or participation in a monitoring program may be used in connection with any proceedings pertaining to his license.

8.(a) Respondent shall be subject to an order of automatic suspension of his license upon the Board's receipt of any information which the Board, in its sole discretion, deems reliable demonstrating that respondent has failed to comply with any of the

conditions set forth in this consent order, including but not limited to report of a confirmed positive urine, or a prima facie showing of use of alcohol or drugs.

(b) Respondent shall have a right to apply for removal of the automatic suspension on ten (10) days notice to the Board and to the Attorney General. The Board may hold a hearing on that application before the full Board or before a committee of the Board. In the event a committee hears the application, its action shall be effective immediately and subject to ratification of the full Board at its next scheduled meeting. In a hearing seeking removal of the automatic suspension, any confirmed positive urine shall be presumed valid.

9. Nothing in this order shall be deemed to preclude the Board from taking any action it deems appropriate should the Board's review of information cause it to determine that such action is warranted or from imposing restrictions or conditions on respondent's license should the Board determine that such restrictions or conditions are appropriate to protect the public health, safety, and welfare.

10. Respondent may seek modification of the terms of this order not sooner than six (6) months from the date of its entry. The Board reserves the right to require respondent's appearance prior to any modification or removal of restrictions set forth in this Consent Order.

NEW JERSEY STATE BOARD OF DENTISTRY

By:

Herbert B. Dolinsky D.D.S.
Herbert Dolinsky, D.D.S.
Acting President

I have read and understand this Consent Order
and agree to be bound by its terms.

I consent to the entry of this Order.

Kenneth Avery D.M.D.
Kenneth Avery, D.M.D.
Date 9/7/11

I have read the terms of this consent order
and agree on behalf of the PAP to comply with
its terms pertaining to the PAP.

L. E. Baxter, Sr.
Louis E. Baxter, Sr., M.D., FASAM
Executive Medical Director, PAP
Date 8/11/11